



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

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STATE OF MARYLAND
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DECISION

IN THE MATTER OF THE APPEAL OF:

Rinis Travel Service, Inc .

Decision No.: 3-EA-84

Date: February 9, 1984

Exec. Determ. No.: 9864

Emp. Account No.: 913381-1

ISSUE:

Whether certain individuals doing work as a travel agent for. Rinis Travel Service, Inc. on a commission basis are employees within the meaning of §20(g) (6) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY, IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU DO BUSINESS.

THE PERIOD FOR FILING AN APPEAL TO COURT EXPIRES _____

APPEARANCES

For the Appellant:

Charles Zuravin - Atty. At Law
Babette Rinis - Owner

For the Executive Director:

John Roberts -
Legal Counsel

FINDINGS OF FACT

The Rinis Travel Service employs seven full-time persons as travel agents, They are paid a hi-weekly salary plus a commission on business which they have personally brought into the office. They are paid sick leave, vacation pay, medical insurance and profit sharing. They are entitled to paid holidays and vacations (three trips per year) , and the use of the company 's computer. They are also trained on the use of the computer.

This case concerns other agents who have some connection with Rinis Travel Service. These agents receive no salary from Rinis Travel Service, Rinis Travel exercises no control over when they work, where they work, which territory they cover, how they work, or . how they are trained. They cannot use Rinis Travel Service's computer terminals.

These travel agents obtain their own customers from their own advertisements or connections and arrange trips for these customers on their own. The customers also are billed by these agents on their own. The only function which Rinis Travel Service provides is the procurement of airline tickets to these agents for a price. When one of these outside agents books a trip which requires an airline ticket, this agent notifies Rinis. Rinis then arranges for the purchase of the airline ticket, taking 40% of the commission for the service. The outside agent retains 60% of the commission.

These outside agents do not use the Rinis Travel Service premises to sell travel to their clients. They are not allowed to use the Rinis computer. They are allowed to use one empty desk on the premises in order to sit and peruse travel material that Rinis.. may or may not have available. The owner of Rinis may consult with these persons on an informal basis and--give them recommendations, but these recommendations are in no way binding on the outside agents. .

These outside agents are not supposed to approach established Rinis customers. The Rinis Travel Service has no control over whether or not these outside agents also work under this arrangement with other travel agencies, nor does it apparently care. No reports are required by Rinis of these outside agents. If, for example, an outside agent is unable to perform the duties which he owes to his customers, the outside agent would not turn to Rinis Travel Service to cover for him, nor is Rinis Travel Service expected to cover for him.

The outside agents do come into the Rinis Travel Service to process airline tickets, as this is the primary service which Rinis does provide to these agents. Many agents are not "appointed" by the airlines as authorized agents, and Rinis uses its appointment to obtain tickets for these agents at a price.

These outside agents do carry business cards with both their names and the Rinis Travel Service's name on them. When the outside agents use Rinis' service to purchase airline tickets, they simply come to the office and use the Rinis Travel Service's validation plate and fill out the airline ticket themselves. They may, though they are not required, also ask the owner of Rinis Travel Service to check the airline ticket for them to see that it is properly completed.

CONCLUSIONS OF LAW

In order for services performed to be considered as exempt from the unemployment insurance statute, the requirements of §20(g) (6) must be met. That section states that all three requirements listed in its subsection must be met concurrently:

- (i) That the individual has been and will continue to be free from control or direction over the performance of those services, both under his contract of service and in fact; and
- (ii) The service is either outside the usual course of business for which that service is performed, or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and
- (iii) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service in question. . . .

It is clear from the facts found above that the outside agents do meet the first criterion. The agency has been able to demonstrate no way whatsoever in which the Rinis Travel Service has control over the way in which these outside agents perform services for their clients.

The Board concludes that the arrangement between Rinis Travel Service and these outside agents also meets the second test of the statute. This test itself has two subparts, the meeting of either of which is sufficient. The first subpart is whether the service is either outside the usual course of business for which that service is performed. This arrangement does not meet this test, as the services performed by the outside agent is very similar to the usual course of business of the Rinis Travel Service. This arrangement does meet the second subpart of this test, however, because the service performed by the outside agents is performed outside of all the places of business of the Rinis Travel Service. The service of these outside agents is selling travel packages, and there is no evidence whatsoever that any selling takes place on the premises. In fact, the evidence shows that virtually nothing takes place on the premises, except the acquisition of airline tickets from Rinis Travel Service.

Concerning the third test, it clearly appears that these outside agents are customarily engaged in an independently established occupation as travel agents. Although detailed evidence was not provided on this point, sufficient evidence was provided for the Board to conclude that these outside agents are, in fact, carrying on their own independent businesses free from Rinis's control.

Since the arrangement between Rinis Travel Service and its outside agents meets all the criteria of §20(g)(6) of the law, the Board concludes that such services are not performed in employment within the meaning of §20(g) of the law. Commissions paid to these outside agents, therefore, are not taxable wages under the Maryland Unemployment Insurance Law.

DECISION

The services performed by the individuals serving as outside agents for the Rinis Travel Service are not services in employment as that term is defined in §20(g) (6) of the Maryland Unemployment Insurance Law.

The' decision of the Appeals Referee is reversed.

Thomas W. Keech

 Chairman

Ray A. Warrick

 Associate Member

Maurice E. Hill

 Associate Member

K:W:D

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COPIES MAILED TO:

EMPLOYER

Charles Zuravin, Esq.
 11032 Two Ship Court
 Columbia, MD 21044

Maurice C. Ashley - U. I. Director

John Roberts - Legal Counsel

D. J. Wajer - Employer Status

M. Scheeler - 207 Section

Anthony Monaco - Field Investigation

Jack Hand - Chief of Contributions

Veronica Miller - Experience Rating

Lawrence C. Hoeck - Accountant/Auditor